

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into on this 10<sup>th</sup> day of \_\_\_\_\_ July \_\_\_\_\_ 2017 (the “Execution Date”) by and among Fujikura, Ltd. and Fujikura Automotive America LLC (including their current and former predecessors, successors, affiliates, subsidiaries, parents, employees, officers, directors, and agents, which collectively are referred to herein as “Fujikura”) and the Attorney General of the State of South Carolina (“South Carolina AG”), on behalf of the Releasors (as “Releasors” is defined more particularly below).

WHEREAS, the South Carolina AG is investigating possible violations of the federal antitrust laws, including Section 1 of the Sherman Act, as well as violations of state antitrust and unfair competition laws, including the South Carolina Unfair Trade Practices Act, codified at sections 39-5-10 *et seq.*, of the South Carolina Code, related to Fujikura’s alleged participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the prices, rig bids, allocate markets and customers and/or cartel-like behavior related to Wire Harnesses (as defined more particularly below), against, among others, Fujikura;

WHEREAS, the South Carolina AG believes that Fujikura and its predecessors sold or manufactured the Released Parts that were installed in automobiles purchased by South Carolina;

WHEREAS, the South Carolina AG believes it has valid claims for injunction, damages, penalties, and attorneys’ fees against Fujikura and litigation is warranted, but nevertheless believes that resolving its claims against Fujikura according to the terms of this Agreement is in the best interest of South Carolina in advancing its investigation because of the payment of the Settlement Amount and the value of the Injunctive Relief and Cooperation (as those terms are defined below) that Fujikura has agreed to provide pursuant to this agreement;

WHEREAS, Fujikura is or has been a defendant in separate actions brought by other

plaintiffs coordinated with *In re Automotive Parts Antitrust Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (the “MDL Litigation”);

WHEREAS, for purposes of this Agreement, the term “Released Parts” shall include “Wire Harnesses” as defined below;

WHEREAS, Fujikura, without any concession or admission of wrongdoing and despite its belief that it is not liable for the claims that have been or could be asserted, and its belief that it has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and potential future litigation, and to obtain the release contemplated by this Agreement, and to put to rest with finality all claims that could have been asserted against Fujikura by South Carolina;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the South Carolina AG, on behalf of Releasors, and Fujikura, that all Released Claims (as those terms are defined below) shall be finally, fully, and forever settled, compromised and released, with prejudice, and except as provided herein, without additional attorneys’ fees or costs, on the following terms and conditions:

**I. Definitions.**

1. “Agreement” means this document representing the Settlement between the Parties.
2. “Cooperation” shall refer to those provisions set forth below in Paragraph 23.
3. “Effective Date” shall be the date executed by undersigned counsel for Fujikura after approval of the Agreement by the Board of Directors for Fujikura.
4. “Injunctive Relief” shall refer to those provisions set forth below in Paragraph 24.

5. “MDL Litigation” shall refer to *In Re Automotive Wire Harness Systems*, United States District Court, Eastern District of Michigan, 12-md-00103, MDL No. 2311.

6. “Relevant Conduct” shall refer to the alleged participation of any Fujikura Releasee in an unlawful conspiracy to raise, fix, maintain and/or stabilize the prices of Wire Harnesses at artificially high levels, to maintain the quantities of Wire Harnesses at artificially low levels, to engage in bid-rigging regarding Wire Harnesses, or other anticompetitive conduct regarding Wire Harnesses, or the purchase, sale or pricing of Wire Harnesses up to the Effective Date.

7. “Released Claims” shall refer to any claims based on, arising out of, or related to, in whole or in part, Relevant Conduct under any federal, state, international, foreign, or local antitrust, competition, unfair trade practices, price discrimination, unitary pricing, consumer protection, restitution, fraud protection, common law unjust enrichment, racketeering, civil conspiracy, or trade practice law (including both statutory and common law) or regulation, or similar requirement, whether based on statute, common law, ordinance, or otherwise of any jurisdiction within the United States or elsewhere in any other jurisdiction worldwide, including any and all claims, demands, actions, judgments, suits, liabilities, expenses (including attorneys’ fees and interests), penalties, or other causes of action that the Releasors ever had, now have, or hereafter can, shall, or may have, claim, bring, or assert in any capacity, against the Fujikura Releasees, whether in law, in equity, or otherwise, based on, arising out of, or relating to the Relevant Conduct, including but not limited to South Carolina’s *parens patriae* claims, unjust enrichment claims, and claims for statutory penalties, disgorgement and restitution for the citizens of South Carolina, pursuant to S.C. Code Ann. § 39-5-50(b) and South Carolina common law.

8. “Settlement Fund” shall be Seventy-Eight Thousand Five Hundred United States Dollars and no cents (\$78,500.00).

9. “Fujikura Releasees” shall refer jointly and severally, individually and collectively, to Fujikura, wherever located, and to all of their respective past and present, direct and indirect, parent companies, subsidiaries and Affiliates (where “Affiliates” is defined as any other entity that is now or was previously owned by, under common ownership with, or an owner of any of the aforementioned Fujikura-related entities, where “owned” and “owner” means holding directly or indirectly 50% or greater equity or beneficial interest); and each and all of the past, present and former principals, partners, officers, directors, supervisors, employees, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing, and any predecessors or successors of any of the above. For the avoidance of doubt, Fujikura Releasees does not include any other wiring harness manufacturer under investigation by South Carolina, or their parents or subsidiaries. The Releasors expressly retain all rights, remedies, claims and actions with regard to entities other than the Fujikura Releasees; this Settlement Agreement shall not be construed to release entities other than the Fujikura Releasees.

10. “Wire Harnesses” shall refer to automotive wire harnesses, automotive electrical wiring, lead wire assemblies, cable bond, automotive wiring connectors, automotive wiring terminals, high voltage wiring, electronic control units, fuse boxes, relay boxes, junction blocks, power distributors, and speed sensor wire assemblies used in motor vehicles.

11. “Releasors” shall refer to the State of South Carolina, by and through its Attorney General, on behalf of the State of South Carolina, its governmental entities (including all state and local level governmental entities and political subdivisions), and the citizens of the State of South Carolina pursuant to S.C. Code Ann. § 39-5-50(b).

## **II. Effectuating the Agreement and the Settlement Fund.**

12. Fujikura and South Carolina shall use their best efforts to effectuate this Agreement.

13. Within one week of South Carolina's receipt of the Settlement Fund, the State shall acknowledge that the Settlement Fund has been paid.

14. Fujikura shall pay the Settlement Fund to the South Carolina AG. The South Carolina AG shall provide Fujikura with written payment processing instructions for payment by electronic transfer. Fujikura shall pay the South Carolina AG within the later of: (1) thirty (30) business days after the Effective Date, or (2) thirty (30) business days after receiving written payment processing instructions from the South Carolina AG.

15. The South Carolina AG agrees that, other than the settlement amounts and other consideration listed herein, Releasors and the South Carolina AG shall have no other recovery of costs, fees, attorneys' fees, damages, penalties, or other relief against the Fujikura Releasors with regard to the Relevant Conduct.

## **III. Release, Discharge, and Covenant Not to Sue**

16. In consideration of the payment of the settlement amount, the Fujikura Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, judgments, actions, suits, or causes of action that are or could be asserted, whether known or unknown, in any actions by or on behalf of Releasors for the Released Claims that Releasors ever had, now have, or hereafter can, shall or may have.

17. With respect to the Released Claims, Releasors expressly waive and release, upon the Effective Date of this Agreement, any and all provisions, rights, and benefits conferred by

any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

18. The South Carolina AG or Releasors may hereafter discover facts other than or different from those which they know or believe to be true with respect to the Released Claims, but hereby, on behalf of the Releasors, expressly waive and fully, finally, and forever settle and release, upon the Effective Date of this Agreement, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that Fujikura and the South Carolina AG have agreed to release, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

19. The Released Claims do not include any claims arising out of product liability, failure to disclose, misrepresentation, warranty, or breach of contract claims in the ordinary course of business or unfair or deceptive conduct not based on allegations of competitor communications, price-fixing, market allocation, bid-rigging, or anti-competitive conduct.

20. The release provided herein shall not have an effect on any claims, under federal or South Carolina laws, brought by litigants other than Releasors against Fujikura, including, but not limited to, any claims or potential claims asserted in the MDL Litigation on behalf of plaintiffs or putative class members who do not fall within the foregoing definitions of Releasors.

21. This Agreement shall not be deemed or construed to be an admission of liability or of any violation of any statute or law or of any wrongdoing by Fujikura. Nor shall this Agreement be deemed as an admission by Fujikura of any of the allegations or claims by the

South Carolina AG. This Agreement may not be used by the South Carolina AG, Releasors, or anyone else in any pending or future civil, criminal, or administrative action or proceeding against Fujikura, except in a proceeding or action to enforce this Agreement.

22. This Agreement does not settle or compromise any claim by the South Carolina AG or Releasors against any defendant or alleged co-conspirator other than Fujikura. All rights against such other defendant or alleged co-conspirator are specifically reserved by the South Carolina AG or Releasors.

#### **IV. Cooperation**

23. In further consideration for the Release, Fujikura, at its own expense, agrees to cooperate with South Carolina in the other investigations that South Carolina has commenced as of the Effective Date against other manufacturers or producers of Wire Harnesses arising from the Relevant Conduct (the "Wire Harnesses Investigation"), until the conclusion of those matters, by:

- a. Declarations: Fujikura, at its expense, shall provide sworn declarations on behalf of persons Fujikura controls as officers, employees, or agents for the purpose of authenticating business records, as reasonably required by the South Carolina AG for its Wire Harnesses Investigation, at a time and in a manner mutually agreed to by the parties.
- b. Testimony at Trial: Fujikura, at its expense, shall produce one (1) appropriate current officer or employee to testify, in person, at the trials and/or hearings in the Wire Harnesses Investigation and/or Litigation. This representative shall also appear by deposition, or affidavit, if necessary and requested by the South Carolina AG for purposes of, or in addition to, a trial of the case. In addition, Fujikura shall provide by representative or stipulation, such additional evidence or statement as reasonably necessary to assist the South Carolina AG in showing that the documents are authentic and/or admissible.
- c. Continuing Obligation: To the extent Fujikura produces additional documents or information to the United States Department of Justice ("DOJ") or other state Attorneys General, Fujikura is under a continuing obligation to promptly provide such documents and information to the South Carolina AG.

- d. The South Carolina AG, on behalf of Releasors, agrees that (i) any cooperation by Fujikura pursuant to this Agreement will be consistent with the terms of any applicable court order, and Fujikura's continuing obligations to the DOJ; (ii) Fujikura has the right to coordinate its cooperation to the South Carolina AG with its cooperation, if any, provided to any other entity, so as to minimize duplication in the providing of such cooperation; and (iii) Fujikura's document preservation and retention obligations shall be governed by the applicable court orders from the MDL Litigation, including the Stipulated Agreement and Order Regarding Preservation of Documents, Electronically Stored Information, and Other Tangible Items, 12-md-02311, Case No. 12-cv-00100 (E.D. Mich. Nov. 15, 2012) (ECF No. 114) ("MDL Preservation Orders"); and (iv) notwithstanding any provisions of the MDL Preservation Orders to the contrary, upon notification that the South Carolina AG has concluded its Wire Harnesses Investigation, the Fujikura Releasees shall have no further obligation to Releasors to retain any information, documents, data, or other items.
- e. The South Carolina AG shall serve a new Civil Investigative Demand seeking the Cooperation information or documents required under this Agreement, and Fujikura shall produce its Cooperation information and documents pursuant to that Civil Investigative Demand. The South Carolina AG and South Carolina shall treat all information and documents produced by Fujikura pursuant to this Agreement and such Civil Investigative Demand as information obtained pursuant to the powers conferred by the South Carolina Unfair Trade Practices Act and shall give confidential treatment to all Fujikura information and documents under all applicable statutes, rules, and regulations, including S.C. Code § 39-5-80, which provides that "information obtained pursuant to the powers conferred by this article shall not be made public or disclosed by the Attorney General or his employees beyond the extent necessary for law-enforcement purposes in the public interest." The South Carolina AG and South Carolina shall not disclose any Fujikura information or documents in response to a request for inspection or copying under the South Carolina's Freedom of Information Act or other statutory or regulatory provisions akin to the federal Freedom of Information Act, except to the extent required by law. This Agreement is discoverable under the South Carolina Freedom of Information Act. To the extent South Carolina AG or South Carolina receives requests that they believe may require the production of any of the information or documents, the South Carolina AG or South Carolina shall first advise Fujikura Releasors and afford them an opportunity to take action to maintain the confidentiality of the requested materials to the extent the Fujikura Releasors deem necessary and appropriate.

**V. Injunctive Relief**



24. Fujikura agrees that for a period of four (4) years from the Effective Date, it shall:

- a. Not engage in price fixing, market allocation, or bid rigging, or any other Relevant Conduct with respect to Fujikura's sale of any Wire Harnesses for ultimate delivery in the State of South Carolina, including participating in meetings, conversations, and communications with other Wire Harness manufacturers (other than among Affiliates, joint venture partners, or entities involved in discussions about the potential purchase of such products from Fujikura, or the potential sale of such products to Fujikura or Affiliates) in the United States and elsewhere to discuss the prices of Wire Harnesses to be sold to any other person or entity and exchanging information on sales of Wire Harnesses to Wire Harness customers, for the purpose of monitoring and enforcing adherence to unlawfully agreed-upon prices, when any such information has not been made public or is not openly and freely available to the public.
- b. Establish, or if already established, maintain and update, a program or programs for the purpose of compliance with antitrust laws, including the Sherman Act, for use by its officers and employees who have responsibility for pricing of Wire Harnesses or for making decisions regarding production capacity of Wire Harnesses, or who Fujikura reasonably believes know non-public information about prices of Wire Harnesses. Said program or programs shall provide relevant compliance education to all persons regarding the legal standards imposed by the federal antitrust laws, the remedies that might be applied in the event of violations of said laws, and their obligations in the event that they observe violations of said laws.
- c. Provide South Carolina on an annual basis for the period of the Injunctive Relief a signed and dated Certification in the form of a letter from a Fujikura representative stating that Fujikura remains in compliance with the Injunctive Relief in this Agreement, which Certifications will allow the South Carolina Attorney General to monitor Fujikura's compliance with the Injunctive Relief of this Agreement. The timing for Fujikura to provide copies of those signed and dated Certifications on or before the anniversary of the Effective Date, by mail and email to:

South Carolina Attorney General Office  
Attn: Consumer Protection & Antitrust Section  
P.O. Box 11549  
Columbia, SC 29209  
sjones@scag.gov; ksimons@scag.gov

- d. Nothing in this Agreement shall be interpreted as limiting in any way Fujikura's obligation to comply to the fullest extent with federal and state antitrust laws.

**VII. Miscellaneous.**

25. This Agreement does not settle or compromise any claim by Releasors against any person or entity other than the Fujikura Releasees. All rights against such other persons or entities are specifically reserved by Releasors. Because of joint and several liability, this Agreement with Fujikura does not impair the South Carolina AG's, South Carolina's, or Releasors' ability to collect the full amount of restitution to which they may be entitled, including any attributable to Fujikura's alleged conduct.

26. The signing of this Agreement terminates the tolling agreement between Fujikura and the South Carolina AG, effective as of August 1, 2012.

27. This Agreement may be executed in counterparts, each of which will be deemed an original, but which together will constitute one and the same instrument, and a facsimile signature or PDF signature shall be deemed an original signature for purposes of executing this Agreement.

28. This Agreement contains the entire Agreement between the parties, and no other understandings or agreements, verbal or otherwise, exist between the parties, except as set forth herein.

29. This Agreement may not be modified or amended except with written consent by both Parties.

30. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasors and the Fujikura Releasees. Without limiting the generality of the foregoing, each and every covenant and agreement made in this Agreement shall be binding upon all Releasors. The Fujikura Releasees (other than Fujikura, which is a party hereto) are

third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

31. Neither the South Carolina AG nor Fujikura shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

32. Where this Agreement requires either party to provide notice or any other communication or Document to the other, such notice shall be in writing, and such notice, communication, or Document shall be provided by electronic mail or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided, unless otherwise provided herein.

33. The South Carolina AG and Fujikura agree that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of South Carolina without regard to its choice of law or conflict of laws principles, and the parties agree that venue for any and all matters or disputes arising out of this Agreement and asserted by or against the South Carolina AG shall lie solely in the South Carolina Business Court, Richland County, South Carolina.

34. Each party affirms that this Agreement has been executed by its authorized representative, who is acting within his or her capacity and authority and that by his or her signature this representative is binding the party on behalf of whom the Agreement is executed to the terms and conditions of this Agreement.

Dated: 7/10/17

**Alan Wilson, ATTORNEY GENERAL FOR  
THE STATE OF SOUTH CAROLINA**

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Dated: 6/28/17

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*Outside Counsel for the State of South Carolina*

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Akira Sasagawa  
Senior Vice President & Member of the Board  
Fujikura, Ltd.  
*On behalf of Fujikura, Ltd. and Fujikura  
Automotive America LLC.*

**Alan Wilson, ATTORNEY GENERAL FOR  
THE STATE OF SOUTH CAROLINA**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
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Dated: July 3, 2017

By:   
Akira Sasagawa  
Senior Vice President & Member of the Board  
Fujikura, Ltd.  
*On behalf of Fujikura, Ltd. and Fujikura  
Automotive America LLC.*